

Revising JPN Marriage Tribunal Procedures to Protect Survivors of Domestic Violence

A Policy Brief by Women's Aid Organisation (WAO) | November 2018

SUMMARY

Problem:

Non-Muslim married couples are required to attend JPN Marriage Tribunals when seeking divorce. While Section 106(1)(vi) of the Law Reform (Marriage and Divorce) Act 1976 (LRA) does set out the possibility of an exemption from the marriage tribunal "where reference to a conciliatory body is impracticable,"¹ the legal fees associated with applying for this exemption would typically be around RM 5,000 - 6,000,² which is cost-prohibitive for many women. **Current tribunal procedures put many domestic violence survivors at risk.**

- **Issue 1:** Survivors are required to attend their marriage tribunals in the location where they last resided with their perpetrator-spouse.
- **Issue 2:** Survivors are typically called to appear at marriage tribunals together with their perpetrator-spouse.
- **Issue 3:** There are no standard security protocols to ensure survivors' safety at marriage tribunals.

Solution:

1. Revise the procedural guidelines of JPN Marriage Tribunals so that domestic violence survivors may utilise the exemption outlined in Section 106(1)(vi) of the LRA without the assistance of a lawyer.
2. Ensure domestic violence survivors are not called to attend marriage tribunals at the same time as their perpetrator-spouse.
3. Introduce a thorough protocol ensuring the safety of domestic violence survivors at marriage tribunals.

INTRODUCTION

Women's Aid Organisation (WAO) assists women survivors of domestic violence to access the justice and protection to which they are entitled under the law.

For some domestic violence survivors, divorce is the only viable option to escape many months or even years of abuse. It takes a great deal of courage to decide to leave an abusive husband, and

¹ *Law Reform (Marriage and Divorce) Act 1976 [Act 164]. Section 106.*

² Augustin, R. (2017). *Marriage tribunal procedures put women at risk*. [online] Free Malaysia Today. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/03/08/wao-marriage-tribunal-procedures-put-women-at-risk/> [Accessed 18 Jun. 2018].

by the time a woman gets to the point of attending a marriage tribunal at JPN, she likely would have endured significant physical violence, sexual abuse, and emotional anguish. It is therefore crucial that JPN's policies and procedures ensure the full protection of the survivor, as per the aims and intentions of the law, and do not add to the survivor's trauma or put their physical and mental well-being at further risk.

Issue 1: Survivors are required to attend their marriage tribunals in the location where they last resided with their perpetrator-spouse.

Current Policy/Practice: According to Section 106(2) of the LRA³, if the two parties to a divorce case are living separately, they must be referred to the marriage tribunal for the area in which they last resided together.

Risk to Survivor: A domestic violence survivor would have likely moved away from her last address to escape the abuse of her husband. To make the survivor travel back to the area – where the perpetrator resides – can cause severe fear and trauma for the survivor, as well as put her physical safety at risk. It may also be financially burdensome for some survivors who might have to borrow money or take time off work to travel back and forth to the tribunal.

WAO Case Study:⁴ Mary married her husband in 2005, and they had two children. The abuse started around three years into the marriage, getting increasingly severe. He would throw helmets, shoes, or any other object he could get a hold of at Mary. He would also choke her, kick her, and force sex on her regularly.

Mary fled her home to escape the abuse on several occasions and attempted to file for divorce on her own. However, when Mary was scheduled to go for one of her required JPN marriage tribunals, her husband locked her inside a room in the house to prevent her from attending.

When Mary eventually sought help from WAO she still wanted to divorce her husband, but was too scared to return to the area where they had last resided together in order to attend the tribunals. A WAO social worker therefore had to accompany Mary to her three marriage tribunals, and then to the Legal Aid Bureau to get a lawyer to file her divorce papers.

Recommendation: As demonstrated in Mary's case, there are often significant risks involved when domestic violence survivors are made to attend marriage tribunals where they last resided with their perpetrator-spouse. WAO acknowledges Section 106(1)(vi) of the LRA which sets out the possibility of an exemption from the marriage tribunal, but draws attention to the associated legal fees which are cost-prohibitive for many women.

The process by which domestic violence survivors may apply for the marriage tribunal exemption must therefore be revised by JPN so that survivors do not require the expertise of a lawyer. Survivors could perhaps apply for the exemption by filling out a simple form (including a supporting affidavit) and attaching copies of police reports or their Emergency Protection Order (EPO), Interim Protection Order (IPO), or Protection Order (PO), thereby completing the process satisfactorily and independently.

Issue 2: Survivors are typically called to appear at marriage tribunals together with their perpetrator-spouse.

³ *Law Reform (Marriage and Divorce) Act 1976 [Act 164]. Section 106.*

⁴ Women's Aid Organisation (2017). *Perspectives on Domestic Violence: A Coordinated Community Response to a Community Issue*. [online] Kuala Lumpur. Available at: <https://bit.ly/2M2n8ul> [Accessed 8 Jun. 2018].

Current Policy/Practice: Attending JPN marriage tribunals is mandated by Section 106(5)(a) of the LRA.⁵ However, this section does not state that both parties must be present at the same time. Despite this, from WAO's experience, many women are called to appear at the same time as their husbands, even in domestic violence situations.

Risk to Survivor: Perpetrators often try to continue violence and abuse even after the survivor has left the situation. As a result, domestic violence survivors who have escaped will likely avoid contact with their perpetrators to protect themselves from further abuse, harassment, or stalking. Making a survivor come in contact with their perpetrator at marriage tribunals endangers the survivor's physical and mental wellbeing.

WAO Case Study:⁶ Nandita had been experiencing physical, psychological, and social domestic violence for more than ten years by her husband, who is a drug addict. Her husband burned her clothes and chased her out of the house, after which she fled to her sister-in-law's home and contacted WAO.

With WAO's help, Nandita applied for a divorce and as part of this process had to appear for three joint JPN marriage tribunals at the location where she last resided with her husband. At one of the tribunals Nandita's father-in-law, husband, and three of her husband's friends harassed, intimidated, and verbally attacked Nandita and the two WAO staff members who had accompanied her, despite being given a warning by the JPN officer. At one point, Nandita's husband forcefully grabbed onto her legs, in response to which she protested and tried to pull away, but he would not let her go. One WAO staff member called the police while the other approached the husband and tried to guard Nandita from further harm.

Recommendation: The discrepancy between policy and practice indicates the lack of a clear directive and training. To rectify this, JPN must issue a statement that joint attendance at marriage tribunals is not required and, furthermore, should not be requested when domestic violence is involved. We strongly recommend JPN to disseminate this information to its personnel through comprehensive training to prevent more incidents such as that of Nandita's case, and to minimise the risk to survivors of domestic violence.

Issue 3. There are no standard security protocols to ensure survivors' safety at marriage tribunals.

Current Policy/Practice: There are no security protocols that have been uniformly implemented at JPN marriage tribunals to ensure the safety of domestic violence survivors and other attendees who may be at risk.

Risk to Survivor: Survivors who face security risks while attending marriage tribunals are not adequately protected by JPN. JPN officers do not always know how to respond, or what the scope of their responsibility is.

WAO Case Study: In the case of Nandita (referenced under Issue 2), after everyone was dismissed and the police left, Nandita was still concerned that the husband's party had remained in the vicinity. She requested to leave through a back door, but the JPN officer laughed this off and said that while there was indeed a back door, he would not let them use it because if he made one exception, everyone would demand to leave through the back door.

⁵ *Law Reform (Marriage and Divorce) Act 1976 [Act 164]. Section 106.*

⁶ Women's Aid Organisation (2017). *Perspectives on Domestic Violence: A Coordinated Community Response to a Community Issue*. [online] Kuala Lumpur. Available at: <https://bit.ly/2M2n8ul> [Accessed 12 Jun. 2018].

The WAO staff tried to compromise and asked if JPN would at least escort them to their cab, and again, the officer said that "that was not a service that JPN provided." The WAO staff members then asked another female officer for help, who agreed.

In the meantime, Nandita's husband had already re-approached her, this time pleading more quietly. The officer who had agreed to help called two other JPN employees to bring the WAO group to the car, while Nandita's husband and six other men stood around the doors and followed the group, still shouting and cursing at them.

Recommendation: The existing gaps in security and in the response by JPN officers can be improved by putting in place a standard security procedure that is incorporated into the training of all JPN officers. A comprehensive security plan should include having staff or police officers available in the event of a survivor being put at risk when attending her marriage tribunal (in the case where she has not applied for and obtained an exemption from the tribunals), particularly where the survivor has already obtained an EPO, IPO, or PO. A separate and secured entrance and exit to the facility would also be helpful in high-risk situations.

CONCLUSION

The issues raised in this policy brief reflect the experiences of domestic violence survivors whom WAO has assisted. WAO urges JPN to consider the recommendations outlined, as well as to conduct a comprehensive review of policies and practices relating to marriage tribunals that involve domestic violence survivors. This is to ensure that survivors do not face further threats to their physical and emotional well-being when attempting to escape their abuse and live a life free from violence.

In the longer-term, WAO also urges the Minister of Law to introduce, and Parliament to adopt, an amendment to Section 106(1) of the Law Reform Marriage and Divorce Act (1976) that adds an explicit ground for exemption from reference to a conciliatory body before petition for divorce for survivors of domestic violence. This is to ensure that survivors are not subjected to the trauma and risk of having to face their perpetrator once again. At a minimum, Section 106(2) of the LRA must be amended to allow survivors to attend marriage tribunals in any jurisdiction, including a jurisdiction where they may currently reside away from their perpetrator-spouse.

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